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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8028 OF 2005

Behram Rustomji Dordi. . . Petitioner.

vs.

Phiroz Rustomji Dordi

& Ors. . . . Respondents.

Mr. P.R. Kadam for petitioner.

Mr. Sunil R. More for Respondent No. 1.

CORAM : A.P. DESHPANDE, J.

DATE : 7th December, 2006.

P.C.

. The present petitioner and the respondent no. 1 are brothers who are in occupation of a tenanted premises owned by other respondents/landlords. The petitioner so also the respondent no. 1 instituted two separate suits seeking a declaration that the plaintiff in each suit is a tenant in the suit premises. The suit filed by the respondent no. 1 has been decreed by a judgment and decree passed on 31.1.2006. No appeal till date has been filed against the same by the present petitioner who is party to the suit. Hence, the learned counsel for the respondents submits that

the present petition has become infructuous and be disposed of as such as the declaration made in favour of the respondent no. 1 has assumed finality.

2. Per contra, the learned counsel appearing for the petitioner submits that the petitioner proposes to file an appeal challenging the judgment and decree dated 31.1.2006 passed in a suit instituted by the respondent no. 1 and hence the petition needs to be decided on merits.

3. This petition arises out of a suit filed by the present petitioner against the landlord and the respondent no. 1 claiming that he is the tenant in the premises. The suit came to be dismissed on 11.7.2003 and as there was delay in filing an application for restoration, another application for condonation of delay came to be filed. There was a delay of about six months in moving the application. The trial court dismissed the application by holding that the delay is not properly explained. The said finding about delay not having been properly explained has been confirmed by dismissal of an appeal filed by the petitioner. The petitioner's suit was dismissed for default on 11.7.2003. The petitioner was arrested on 29.5.2003 and was released on bail on 21.7.2003. However, the application for setting aside the dismissal order is

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filed belatedly i.e. on 19.3.2004. Both the Courts have held that the delay caused after the release of the petitioner from the jail, which is of a period of about six months, has not been properly explained and there was no sufficient cause for the petitioner to have caused the delay.

4. Perused the order. No interference is called for. Writ Petition summarily rejected.

(A.P. Deshpande, J.)